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AT SEATTLE
CLERK U.S. DISTRICT COURT
BY WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

LESLIE KILLINGSWORTH,

Defendant.

NO. CR04-124P

PLEA AGREEMENT

The United States of America, by and through John McKay, United States Attorney for the Western District of Washington, Kurt P. Hermanns and Floyd G. Short, Assistant United States Attorneys for said District, and the Defendant, LESLIE KILLINGSWORTH, and his attorney, Kevin J. Curtis, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c):

1. Waiver of Indictment. Defendant, having been advised of the right to be charged by Indictment, agrees to waive that right and enter a plea of guilty to the charge brought by the United States Attorney in an Information.

2. The Charge. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to the following charge contained in the Information. By entering this plea of guilty, Defendant hereby waives all objections to the form of the charging document.

a. Wire Fraud, as charged in Count 1, in violation of Title 18, United States Code, Sections 1343 and 1346.

1 3. Elements of the Offense. The elements of the offense of wire fraud, as
2 charged in Count 1, in violation of Title 18, United States Code, Sections 1343 and 1346,
3 are as follows:

4 First, that the defendant knowingly created or participated in a scheme and artifice
5 to defraud, to deprive another of the right of honest services, and to obtain money by false
6 pretenses and representations as alleged in the Information;

7 Second, the defendant knew that the pretenses or representations were false and
8 fraudulent;

9 Third, the false and fraudulent pretenses or representations concerned a material
10 matter;

11 Fourth, the defendant acted with the intent to defraud and to deprive of the right of
12 honest service; and

13 Fifth, the defendant used, or caused the use of wire communications in interstate
14 commerce to carry out, or attempt to carry out the scheme.

15 4. The Penalties. Defendant understands that the statutory penalties for the
16 offense of wire fraud, as charged in Count 1, are as follows:

17 a. Count 1 (Wire Fraud): imprisonment for up to five (5) years, a fine of
18 up to two hundred fifty thousand dollars (\$250,000), a period of supervision following
19 release from prison of at least two years but not more than three years, and a one hundred
20 dollar (\$100.00) penalty assessment. The defendant agrees that the penalty assessment
21 shall be paid at or before the time of sentencing.

22 Defendant agrees that any monetary penalty the Court imposes, including
23 the special assessment, fine, costs or restitution, is due and payable immediately, and
24 further agrees to submit a completed Financial Statement of Debtor form as requested by
25 the United States Attorney's Office.

26 Defendant understands that supervised release is a period of time following
27 imprisonment during which he will be subject to certain restrictions and requirements.
28 Defendant further understands that if supervised release is imposed and he violates one or

1 more of its conditions, he could be returned to prison for all or part of the term of
2 supervised release that was originally imposed. This could result in Defendant serving a
3 total term of imprisonment greater than the statutory maximum stated above.

4 5. Rights Waived by Pleading Guilty. Defendant represents to the Court that
5 he is satisfied with the representation provided by his attorney. Defendant understands
6 that, by pleading guilty, he knowingly and voluntarily waives the following rights:

7 a. The right to plead not guilty, and to persist in a plea of not guilty;
8 b. The right to a speedy and public trial before a jury of Defendant's
9 peers;

10 c. The right to the effective assistance of counsel at trial, including, if
11 Defendant could not afford an attorney, the right to have the Court appoint one for
12 Defendant;

13 d. The right to be presumed innocent until guilt has been established at
14 trial, beyond a reasonable doubt;

15 e. The right to confront and cross-examine witnesses against Defendant;

16 f. The right to compel or subpoena witnesses to appear on Defendant's
17 behalf;

18 g. The right to testify or to remain silent at trial, which such silence
19 could not be used against Defendant; and

20 h. The right to appeal a finding of guilt or any pretrial rulings.

21 6. Applicability of Sentencing Guidelines. Defendant understands and
22 acknowledges the following:

23 a. The United States Sentencing Guidelines, promulgated by the
24 United States Sentencing Commission, are applicable to this case;

25 b. The Court will determine Defendant's applicable Sentencing
26 Guidelines range at the time of sentencing;

27 c. The Court may impose any sentence authorized by law, including a
28 sentence that, under some circumstances, departs from any applicable Sentencing

1 Guidelines range up to the maximum term authorized by law;

2 d. The Court is not bound by any recommendation regarding the
3 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
4 range offered by the parties, or by the United States Probation Department; and

5 e. Defendant may not withdraw a guilty plea solely because of the
6 sentence imposed by the Court.

7 7. Ultimate Sentence. Defendant acknowledges that no one has promised or
8 guaranteed what sentence the Court will impose.

9 8. Loss Amount. The United States and the defendant agree that the correct
10 amount of intended loss for purposes of USSG §§ 2B1.1 and 2F1.1 shall be \$902,497.

11 9. Statement of Facts. The parties agree on the following facts in support of
12 Defendant's guilty plea and for purposes of calculating the base offense level of the
13 Sentencing Guidelines. Defendant admits he is guilty of the charged offense.

14 a. At all relevant times LESLIE KILLINGSWORTH was an employee
15 and shareholder of Datum Pacific, Inc., with its headquarters in Coupeville, Washington.
16 Mr. KILLINGSWORTH was a licensed Washington State Professional Engineer. In that
17 capacity he also acted as the District Engineer on a variety of projects for the Holmes
18 Harbor Sewer District (the "District"), a municipal corporation that provided sewer and
19 water service on Whidbey Island, Washington.

20 b. In approximately the fall of 1999, Mr. KILLINGSWORTH agreed to
21 act as the District's Engineer for a development project proposed by Terry Martin. Mr.
22 KILLINGSWORTH had a fiduciary duty to protect the District in connection with Mr.
23 Martin's actions and representations. In particular, Mr. KILLINGSWORTH was to
24 advise the District of the functionality of the infrastructure for the project, its progress,
25 and to approve all payments made to Mr. Martin. Mr. Martin's plan envisioned the
26 issuance by the District of about \$20 million in tax exempt municipal bonds to fund the
27 construction of infrastructure and utilities, and to purchase 15 acres of land relating to a
28 privately funded office complex called the Silver Sound Corporate Center. The project

1 was located near Paine Field in Everett, Washington. Mr. KILLINGSWORTH
2 understood that assessments levied against owners or users of the Corporate Center would
3 be the source of revenue for repayment of the municipal bonds.

4 c. Between approximately May 2000 and October 2000, Mr.
5 KILLINGSWORTH was aware that Mr. Martin's site plan application with the City of
6 Everett had not been accepted and was returned as incomplete. He knew further that the
7 City had issued a list of necessary corrections to be addressed before the application
8 would again be accepted. Mr. Martin directed Mr. KILLINGSWORTH to not disclose
9 the city's return of the application to the District or to the bond counsel and the bond
10 underwriters. Mr. KILLINGSWORTH did not do so. Withholding such information was
11 a material omission and a violation of his duty to protect the District.

12 d. Between about March 19, 2000 and October 20, 2000, in his capacity
13 as District Engineer, Mr. KILLINGSWORTH submitted letters to the District, which he
14 understood would be forwarded to bond counsel and the bond underwriters. Those letters
15 were misleading and deceptive in several respects. The letters failed to disclose that the
16 site plan had not been accepted, was returned as incomplete, and required additional
17 information. The letters falsely implied that certain work done by a prior owner, such as
18 zoning, a school study and a regional environmental impact study performed for the City
19 of Everett, were tasks performed by Mr. Martin. In a letter dated October 19, 2000, Mr.
20 KILLINGSWORTH represented that the clearing and grading permits would be issued in
21 about two weeks. Those various statements were misleading, deceptive and false. Mr.

22 Martin directed Mr. KILLINGSWORTH to include the statements in the letters. Each of
23 the letters, although signed and ostensibly issued by Mr. KILLINGSWORTH, were in
24 fact written in part, edited and approved by Mr. Martin.

25 e. In approximately August 2000, before the bond issuance, Mr.
26 KILLINGSWORTH, others at Datum Pacific, and Mr. Martin agreed that Mr. Martin
27 would purchase Datum Pacific for approximately \$2 million. These discussions began in
28 approximately 1998 and should have been disclosed to the District by Mr. Killingsworth.

1 f. At the time of closing of the municipal bond issuance on or about
2 October 26, 2000, Mr. KILLINGSWORTH learned that Mr. Martin had requested a draw
3 of about \$1.24 million from bond proceeds to one of his companies called Silver Legacy.
4 Mr. KILLINGSWORTH knew and understood that such pay requests were to be limited
5 to reimbursement for work already performed on the public infrastructure portion of the
6 project. In reviewing Mr. Martin's documentation for the pay request it was apparent to
7 Mr. KILLINGSWORTH that not all of the work had in fact been performed.
8 Nevertheless, at Mr. Martin's insistence and direction, Mr. KILLINGSWORTH approved
9 and certified the pay request. Mr. Martin and Silver Legacy were thereafter paid the
10 funds by the District.

11 g. In early November 2000, after closing of the bond issuance, Mr.
12 KILLINGSWORTH learned that the site plan application still had not been resubmitted to
13 the city of Everett and that Mr. Martin had not applied for permits. Mr.
14 KILLINGSWORTH understood that immediate commencement of construction was an
15 important element of the municipal bond issuance. Mr. KILLINGSWORTH did not
16 make that disclosure to the District knowing that it was a material omission. Mr. Martin
17 had previously directed Mr. Killingsworth to not disclose the information and he treated
18 that as a continuing directive.

19 h. In approximately late November 2000, Mr. KILLINGSWORTH,
20 working with Mr. Martin and others, assembled another pay request, called Pay Request
21 No. 3. It was for approximately \$902,000 to be paid to Mr. Martin's company Silver
22 Legacy from bond proceeds. Mr. KILLINGSWORTH knew and understood that this pay
23 request was false and fraudulent in several material ways. First, previously issued Datum
24 Pacific invoices relating to projects other than the Silver Sound Corporate Center, which
25 Mr. Martin had not paid, were fraudulently rewritten to appear that they related to the
26 Silver Sound Corporate Center project and thus were appropriately paid from municipal
27 bond proceeds. Second, Datum Pacific invoices were fraudulently rewritten to change the
28 scope of work, date of work and payment histories to make them appear that the work had

1 recently occurred on the Silver Sound project and justified a draw request. Third, an
2 invoice from another contractor, W. H. LLC, for about \$441,000, was false and
3 fraudulent in that it described work that had not been performed at all. Fourth, an invoice
4 from Silver Legacy in the amount of about \$277,000 was false in that no work had been
5 done since the prior pay request. Pay Request No. 3 and the false invoices were faxed, by
6 interstate wire communication, between Mr. KILLINGSWORTH and the underwriters in
7 California. Mr. KILLINGSWORTH signed and certified Pay Request No. 3. Mr.
8 KILLINGSWORTH participated in the fabrication of Pay Request No. 3 in an effort to
9 provide Mr. Martin sufficient funds to pay his debt to Datum Pacific.

10 i. At a meeting of the Board of Commissioners for the District on
11 December 7, 2000, Mr. KILLINGSWORTH and Mr. Martin submitted Pay Request No. 3
12 for payment. It was rejected because the Board of Commissioners had recently learned
13 that permits had not been issued and essentially no construction or mobilization work had
14 been done at the site.

15 j. On or about December 18, 2000, Mr. Martin directed Mr.
16 KILLINGSWORTH to contact the President of the Board of Commissioners for the
17 District to retrieve Pay Request No. 3 and the accompanying false invoices. Mr. Martin
18 stated the documents had to be retrieved. Mr. KILLINGSWORTH contacted the
19 chairman but was unable to retrieve the documents.

20 k. Mr. KILLINGSWORTH's actions were taken knowingly,
21 deliberately and with the intent to defraud.

22 l. The acts described herein occurred within the Western District of
23 Washington and elsewhere.

24
25 10. Non-Prosecution of Additional Offenses. As part of this Plea Agreement,
26 the United States Attorney's Office for the Western District of Washington agrees not to
27 prosecute defendant for any additional offenses known to it as of the time of this
28 Agreement that are based upon evidence in its possession at this time, and that relate to

1 the conduct described in the Plea Agreement. In this regard, defendant recognizes that
2 the United States has agreed not to prosecute all of the criminal charges that the evidence
3 establishes were committed by defendant solely because of the promises made by
4 defendant in this Agreement. Defendant acknowledges and agrees, however, that for
5 purposes of preparing the Presentence Report, the United States Attorney's Office will
6 provide the United States Probation Office with evidence of all relevant conduct
7 committed by defendant.

8 11. Voluntariness of Plea. Defendant acknowledges that he has entered into
9 this Plea Agreement freely and voluntarily, and that no threats or promises, other than the
10 promises contained in this Plea Agreement, were made to induce defendant to enter this
11 plea of guilty.

12 12. Statute of Limitations. In the event that this Agreement is not accepted by
13 the Court for any reason, or defendant has breached any of the terms of this Plea
14 Agreement, the statute of limitations shall be deemed to have been tolled from the date of
15 the Plea Agreement to: (1) 30 days following the date of non-acceptance of the Plea
16 Agreement by the Court; or (2) 30 days following the date on which a breach of the Plea
17 Agreement by defendant is discovered by the United States Attorney's Office.

18 13. Post-Plea Conduct. Defendant understands that the terms of this Plea
19 Agreement apply only to conduct that occurred prior to the execution of this Agreement.
20 If, after the date of this Agreement, defendant should engage in conduct that would
21 warrant an increase in defendant's adjusted offense level or justify an upward departure
22 under the Sentencing Guidelines (examples of which include, but are not limited to:
23 obstruction of justice, failure to appear for a court proceeding, criminal conduct while
24 pending sentencing, and false statements to law enforcement agents, the probation officer
25 or Court), the United States is free under this Agreement to seek a sentencing
26 enhancement or upward departure based on that conduct.

27 14. Cooperation. Defendant shall cooperate completely and truthfully with law
28 enforcement authorities in the investigation and prosecution of other individuals involved

1 in criminal activity. Such cooperation shall include, but not be limited to, complete and
2 truthful statements to law enforcement officers, as well as complete and truthful
3 testimony, if called as a witness before a grand jury, or at any state or federal trial, retrial,
4 or other judicial proceedings. Defendant acknowledges that this obligation to cooperate
5 shall continue after Defendant has entered a guilty plea and sentence has been imposed,
6 no matter what sentence Defendant receives; Defendant's failure to do so may constitute a
7 breach of this Plea Agreement.

8 Defendant understands that the United States will tolerate no deception from him.
9 If, in the estimation of the United States Attorney, information or testimony provided
10 from the date of the Plea Agreement, proves to be untruthful or incomplete in any way,
11 regardless of whether the untruthfulness helps or hurts the United States' case, the United
12 States Attorney for the Western District of Washington may consider that Defendant has
13 breached this Plea Agreement.

14 The United States Attorney's Office for the Western District of Washington, in
15 turn, agrees not to prosecute Defendant for any other offenses, other than crimes of
16 violence, that Defendant may have committed in the Western District of Washington prior
17 to the date of this Agreement about which: (1) the United States presently possesses
18 information; or (2) Defendant provides information pursuant to this Agreement to
19 cooperate with the authorities.

20 The parties agree that information provided by Defendant in connection with this
21 Plea Agreement shall not be used to determine Defendant's sentence, except to the extent
22 permitted by USSG § 1B1.8.

23 In exchange for Defendant's cooperation, as described above, and conditioned
24 upon Defendant's fulfillment of all conditions of this Plea Agreement, the United States
25 Attorney agrees to consider filing a motion, pursuant to USSG § 5K1.1 permitting the
26 Court to sentence Defendant to less than the otherwise applicable Sentencing Guideline
27 range and below the mandatory minimum sentence.

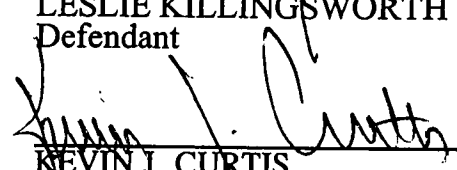
28 Defendant agrees that his sentencing date may be delayed based on the United

1 States' need for his continued cooperation, and agrees not to object to any continuances
2 of his sentencing date sought by the United States.

3 15. Completeness of Agreement. The United States and defendant
4 acknowledge that these terms constitute the entire Plea Agreement between the parties.
5 This Agreement only binds the United States Attorney's Office for the Western District of
6 Washington. It does not bind any other United States Attorney's Office or any other
7 office or agency of the United States, or any state or local prosecutor.

8 Dated this 24th day of March, 2004.

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11 
LESLIE KILLINGSWORTH
12 Defendant

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14 KEVIN J. CURTIS
Attorney for defendant

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16 KURT P. HERMANNNS
Assistant United States Attorney

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18 FLOYD G. SHORT
19 Assistant United States Attorney
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